IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1256 OF 1999.

Ms.Mina Fusade,
legal heir of the late
Prince Sayajirao Gaekwar,
having her address at
C/o.M/s.Y.K.Bhagwagar & Co.,
Ador House, 6th Floor,
6, K.Dubash Marg,
Mumbai- 400 001. ... Petitioner.

V/s.

1. Mr.Shibaiji Dash,
the Commissioner of Income-tax
Mumbai City-XIII, having his
office at Room No.469,
Aayakar Bhavan, Maharshi Karve
Road, Mumbai- 400 020.

2. The Income-tax Appellate
Tribunal, constituted by the
Central Government under
Section 252(1) of the Income
Tax Act, 1961 and having its
office at the old CGO Bldg.,
4th floor, Maharshi Karve Road,
Mumbai- 400 020.

3. The Union of India. ... Respondents.

Nitesh Joshi i/b. Arun Sapkal & Co.
for the petitioner.

Ashok Kotangale for the respondents.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

RESERVED ON : 11th October 2005.

PRONOUNCED ON : 25th October 2005.

JUDGMENT : (Per V.C.Daga, J.)

. The petitioner in this petition seeks to challenge action of respondent No.1 rejecting the

declaration made by the Petitioner under Kar Vivad Samadhan Scheme, 1998 ("KVS Scheme" for short) in respect of tax arrears of late Prince Sayajirao Gaekwar under Wealth Tax Act, 1957 ("Act" for short) for the assessment years 1969-70 to 1978-79; 1981-82; and 1984-85 to 1986-87 contending that the order of rejection suffers from non-application of mind and is contrary to the provisions of KVS Scheme.

Factual Scenario :
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2. The factual scenario giving rise to the present petition in nutshell is as under:

3. The petitioner is a legal heir of deceased Prince Sayajirao Gaekwar (hereinafter referred to as "the deceased" for short), who died in France on or about 7th of May, 1985. The petitioner is a non-resident, being a citizen of the United Kingdom, presently residing in Monaco in the South of France.

4. The respondent No.1 is the Commissioner of Income-tax, who is the designated authority under section 87(b)(i) of the Finance (No.2) Act, 1998 ("Finance Act" for short), vide order-cum-intimation

dated 10th March, 1999 rejected the applications-cum-declarations made by the petitioner under KVS Scheme enacted under Chapter-IV of the Finance Act. The deceased had suffered best assessments under the Act, inter alia; for assessment years 1969-70 to 1978-79; 1981-82; and 1984-85 to 1986-87 along with penalties, inter alia; under sections 18(1)(a); 18(1)(b) and 18(1)(c) of the Act.

5. Being aggrieved by the aforesaid assessment orders, as advised by the Chartered Accountant, the petitioner filed appeals before the Commissioner of Wealth Tax (Appeals) against all the assessment orders suffered by the deceased under the Act along with applications seeking condonation of delay in filing appeals. All the appeals, filed by the petitioner, against the orders of assessment and penalties passed against deceased under the Act, were taken up for hearing by the Commissioner of Wealth Tax (Appeals)-III, Mumbai, who was pleased to dismiss all appeals by a common order dated 29th December, 1998 holding them to be barred by limitation, the copy of which was received by the petitioner on 1st January, 1999.

6. That prior to the receipt of copy of the order rejecting appeals, the petitioner, on 29th December, 1998, had filed declarations under the KVS Scheme with respect to the aforesaid assessment and the penalty orders suffered by the deceased under the Act. However, the said declarations came to be rejected by respondent No.1 by 14 different orders, all dated 15th February, 1999 passed under section 90(1) of the Finance Act holding that the appeals giving rise to the tax arrears were not pending before the appellate authority on the date of declarations and the petitioner, therefore, was not eligible for being admitted under the KVS Scheme.

7. Being aggrieved by the order passed by the Commissioner of Wealth Tax (Appeals) dated 29th December, 1998, the petitioner filed appeals to the Income Tax Appellate Tribunal ("Tribunal" for short) on 21st and 22nd January, 1999 not only against the refusal to condone delay but also on merits.

8. On 28th January, 1999, the petitioner under the cover of her Chartered Accountant's letter dated 27th January, 1999, filed fresh declarations under the KVS Scheme to settle tax liability arising under the orders of assessment and penalty suffered

by the deceased which were subject matters of the appeals filed before the Tribunal on 21st and 22nd January, 1999 as stated hereinabove.

9. On 16th February, 1999, petitioner's Chartered Accountant made submission to respondent No.1 contending that the fresh declarations made by the petitioner under the KVS Scheme on 28th January, 1999 were competent, legal and valid in all respects, particularly, when such declarations had been filed by the petitioner after presenting appeals before the Tribunal on 21st and 22nd January, 1999. The petitioner's Chartered Accountant, therefore, requested respondent No.1 to issue certificate in favour of the petitioner under section 90(1) of the Finance Act with respect to declarations made on 28th January, 1999 under the KVS Scheme for the assessment years in question. The aforesaid submission made on behalf of the petitioner did not find favour with respondent No.1, who was pleased to reject all the declarations made by the petitioner under KVS Scheme by the impugned order-cum-intimation dated 10th March, 1999 holding that the appeals filed by the petitioner before the Tribunal, against the order of the Commissioner of Wealth Tax (Appeals), rejecting plea of the

petitioner for condonation of delay, did not amount to appeals "pending" against the orders of assessment.

10. The aforesaid order dated 10th March, 1999 rejecting second declarations dated 28th January, 1999 made under the KVS Scheme is a subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

Submissions :
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11. Mr.Joshi, learned counsel appearing for the petitioner submits that respondent No.1 has grossly erred in alleging that the petitioner's appeals before the Tribunal against the order dated 29th December, 1998, passed by the Commissioner of Wealth Tax (Appeals), were only against the orders rejecting petitioner's plea for condonation of delay as such those appeals were neither appeals in the eye of law nor could they be said to be pending on the date of declaration made under the KVS Scheme. He, therefore, submits that the reason given by respondent No.1 for rejecting petitioner's declarations under KVS Scheme was apparently erroneous and contrary to the record.

12. According to Mr.Joshi, disqualification under section 95(i)(c) of the Finance Act applies only to the case where no appeal is pending before the appellate authority. He submits that if the assessee has an appeal pending before any appellate authority, then he is eligible for the benefit of KVS Scheme irrespective of the grounds raised in such appeal. He, therefore, submits that even assuming, whilst denying, that the petitioner had challenged the orders of the first appellate authority dated 29th December, 1998 only on the ground that it had erred in not condoning the alleged delay in filing such appeals and not on merits, even then, the petitioner could not be disqualified under the provisions of section 95(i)(c) of the Finance Act. In his submission, there were validly presented because there were subsisting appeals; filed by the petitioner before the Tribunal. He further submits that respondent No.1 has admitted and acknowledged in the impugned order that the appeals of the petitioner were very much pending before the Tribunal. In that view of the matter, he submits that the impugned order is unsustainable and the same is liable to be quashed and set aside.

13. Mr.Joshi, relying upon the judgment of the Apex Court in the case of **Mela Ram & Sons v. C.I.T.**, (1956)29 ITR 607 urged that an appeal presented out of time is the appeal and the order dismissing it as time-barred is one passed in the appeal. He further placed reliance on the judgment in **Sheodan Singh v. Daryao Kunwar**, AIR 1966 SC 1332, rendered by four judge Bench of the Apex Court; wherein the question that arose was: whether the dismissal of appeal from a decree on the ground that the appeal was barred by limitation was a decision in appeal. The Apex Court held:

> "We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits, itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal."

He also relied upon the judgment of the Apex Court in the case of **Board of Revenue v. M/s.Raj Brothers Agencies etc.**, 1973 (3) SCR 492; wherein the Apex Court approved the decision of the Madras High Court which had applied the principle stated in **Mela Ram & Sons case** (supra).

14. Mr.Joshi, learned counsel for the petitioner also placed reliance on the judgment of the Apex Court in the case of **Essar Constructions v. N.P.Rama Krishna Reddy**, (2000) 6 SCC 94; wherein the Apex Court observed that a suit which is dismissed on the ground of limitation may be appealed against as a decree. By the same token, it was held that an application under section 30 of the Arbitration Act, which was dismissed on the ground of limitation, was nothing but refusal to set aside the award.

15. Mr.Joshi pressed into service the judgment of two judge Bench of the Apex Court in the case of **C.I.T. v. Shatrushailya Digvijay Jadeja**, (2005) 277 ITR 435 (SC); wherein the Apex Court has considered the scope of section 95(i)(c) of the Finance Act. The Apex Court ruled that mere fact that the revision application filed beyond the period of limitation and might be rejected on the ground of delay did not mean that there were no revision application pending before the Commissioner (Appeals) as such the order of the designated authority rejecting the declaration was held to be bad. Thus, Mr.Joshi submits that on the same

principle the impugned order refusing to accept the declarations made by the petitioner in respect of assessments of the deceased is liable to be quashed and set aside and the declarations are liable to be held as legal and valid.

Per Contra :
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16. Mr.Kotangale, learned counsel appearing for the Revenue submits that an appeal could not be said to be pending in absence of order condoning delay in filing it. In his submission, in the instant case, delay in filing appeals had not been condoned as no ground for its condonation was made out by the petitioner, as such the declarations were rightly not entertained and rejected.

17. Learned counsel for the Revenue, relying upon the decision of three judges Bench of the Apex Court in the case of **Computwel Systems P.Ltd. v. W.Hasan & anr.**, (2003) 260 ITR 86, submits that an appeal can be treated as regular appeal only when the delay in filing appeal is condoned. In the instant case, the limitation in preferring appeals having not been condoned by the first appellate authority the appeals filed before it were not

competent, hence, no appeals were pending on the date when the declarations were made.

18. Mr.Kotangale submits that the appeals filed before the Tribunal were against the orders refusing to condone delay and not against the orders of assessment giving rise to tax arrears. He, therefore, submits that no fault can be found with the decision of respondent No.1 rejecting the declarations filed by the petitioner under KVS Scheme.

19. Mr.Kotangale further submits that the appeals filed by the petitioner before the Tribunal were never admitted. Since appeals themselves were not admitted, the said appeals could not be treated as admitted appeals as required under section 95(i)(c) of the Finance Act. He, thus, tried to support the impugned order and prayed for dismissal of the petition.

In Rejoinder :
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20. Mr.Joshi, learned counsel for the petitioner, submits that in the Tribunal there is no procedure to admit appeal and then to hear it on

merits. In other words, as per his submission, there is no stage of admission of appeal under the rules of the Tribunal. He submits that all appeals, which are validly presented before the Tribunal, by implication are treated as admitted appeals competent for hearing on merits. This factual position is not in dispute.

21. The learned counsel for the petitioner, while reacting to the submissions made by learned counsel for the Revenue relying on the judgment of the Apex Court in **Computwel Systems P.Ltd.** (supra), submits that this judgment was based on the peculiar facts of that particular case. He submits, in that case, original revision petition filed before the original authority itself was barred by limitation. Ultimately, rejection of prayer for condonation of delay resulted in dismissal of revision petition. As such the revision petition in question was no revision petition in the eye of law. According to him, in the case at hand, the appeals themselves were against the order refusing to condone delay. The appeals were neither barred by limitation nor suffered from any defect. Such appeals were perfectly competent and tenable.

22. Learned counsel for the petitioner further submits that subsequent to the impugned order rejecting declarations filed under KVS Scheme, during pendency of the petition, the Tribunal has allowed the appeals and condoned delay in filing appeals before the first appellate authority. In his submission, this subsequent event is required to be taken into account while deciding this petition. He, thus, submits that the order condoning delay will always relate back to the date of presentation of the appeal. At any rate, the appellate order allowing appeal will stand substituted with that of order rejecting appeal on the ground of condonation of delay. If that be so, in his submission, the appeals became very much competent before the first appellate authority in view of subsequent order of the Tribunal. Consequently, the declarations filed on that date will have to be treated as legal and valid declarations filed by the petitioner pending appeals. He, thus, submits that the impugned order rejecting declarations under KVS Scheme is liable to be quashed and set aside.

23. Learned counsel for the petitioner, without prejudice to his above submission and without admitting that there is any conflict of

views between the judgments of the Apex Court in **Computwel Systems P.Ltd.** (supra) and **Shatrushailya Digvijaysingh Jadeja** (supra), submits that the earlier judgments of three and four judge Benches were not brought to the notice of the Apex Court when case of **Computwel Systems P.Ltd.** was heard and decided, which can be said to be a cause for taking little different view giving prima facie picture that it runs contrary to the earlier views of the Apex Court that appeal barred by limitation is still an appeal. He, thus, submits that for any reason if any conflict is noticed by this Court in two judgments of the Apex Court referred to hereinabove, in that event, the judgment of the Apex Court in **Computwel Systems P.Ltd.** (supra) should be treated as per-inquerium.

The Issue :
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24. The main issue for determination is:

> Whether an appeal against the order refusing to condone delay (which is very much tenable under the Act) can be said to be a pending appeal as contemplated under section 95(i)(c)?

Emerging Principles :
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25. Before proceeding to consider the above issue, let us first examine the principles emerging from various judgments of the Apex Court cited at bar.

26. The first judgment of the Apex Court cited in line is in the case of **Mela Ram & Sons** (supra); wherein a specific question involved was: whether an appeal accompanied by application for condonation of delay in filing appeal was appeal in the eye of law, when the application for condonation of delay in filing appeal was rejected and, consequently, the appeal resulted in dismissal as being barred by limitation. The Apex Court relying upon the observations made by the Privy Council in **Nagendra Nath Dey v. Suresh Chandra Dey** (1932) (59 Indian Appeals 283) held that the appeal presented out of time is an appeal, and an order dismissing it as time-barred is one passed in appeal. the observations made by the Privy Council read as under:

> "there is no definition of appeal in the Civil Procedure Code, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a

> subordinate court, is an appeal within the ordinary acceptation of the term and that it no less an appeal because it is irregular or incompetent."

The aforesaid observations were also referred to by the Apex Court with approval in **Raja Kulkarni and others v. The State of Bombay**, 1954 SCR 384.

27. The Apex Court in the another four judge Bench decision delivered in the case of **Sheodan Singh case** (supra); was confronted with the question as to whether the dismissal of appeal from a decree on the ground that the appeal was barred by limitation was a decision in the appeal. As stated earlier, the Apex Court held that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground like limitation, it must be held that such dismissal, when it confirms the decision of the trial court on the merits, itself amounts to the appeal being heard and finally decided on the merits, whatever may be the ground for dismissal of the appeal.

28. The Apex Court in the case of **Shyam Sundar Sarma** (supra), while referring to the decision in the case of **Ratansingh v. Vijaysingh and others**,

(2001) 1 SCC 469 rendered by its two judge Bench; wherein it was held that dismissal of an application for condonation of delay would not amount to a decree and, therefore, dismissal of an appeal as time barred was also not a decree, observed that the earlier judgments of the Apex Court in **Mela Ram & Sons** (supra) and **Sheodan Singh** (supra) were not brought to the notice of the two judge Bench and further went on to hold that dismissal of appeal for default along with application for condonation of delay in its filing was a decision in appeal and, thereafter, the application for setting aside that decision under order 9 rule 13 of Code of Civil Procedure, 1908 was not maintainable. The submissions that the appeal filed with application for condonation of delay was not an appeal and that such case should be treated as non-filing of appeal

did not find favour with the Apex Court

29. In the case of **Essar Constructions** (supra), the Apex Court ruled that a suit which is dismissed on the ground of limitation may be appealed against as a decree. By the same token dismissal of application made under section 30 of the Arbitration Act on the ground of limitation was held as refusal to set aside the award. The Apex

Court further went on to observe that if section 39(1)(vi) and section 17 of the Arbitration Act are read together, it would follow that application for setting aside the award which was rejected on the ground that it was delayed and that no sufficient cause had been made out under section 5 of the Limitation Act would be an appealable order.

30. In the case of **Shatrushailya Digvijaysingh Jadeja** (supra), the Apex Court was dealing with the KVS Scheme; wherein, in respect of assessment years 1984-85 to 1991-92, the assessee was held liable to pay tax under assessment orders passed under section 143(3) of the Income-tax Act, 1961 and also under the assessment orders passed under the Wealth-tax Act, 1957. Being aggrieved by the assessment orders, the assessee therein, had preferred appeals to the Commissioner (Appeals). The appeals were, however, dismissed in the year 1992-93 as the appellants did not make pre-deposit and failed to pay self-assessed tax. The Finance Act introduced KVS Scheme. The appellants filed appeals and revisions on 28/29th December, 1998 along with applications for condonation of delay and applied for settlement of tax dues under the KVS Scheme by making requisite declarations. The designated

authority rejected declarations made by the assessee in relation to the revision applications. On a writ petition preferred by the assessee the High Court held that the word "pending" appearing in section 95(i)(c) of the Finance Act, in relation to revision proceedings meant "factually pending" and the fact that the revision petitions were not filed within the period of limitation did not detract from the fact that the proceedings were pending and the designated authority was directed to accept the declarations. The Apex Court, on appeal by the department, confirmed the decision of the High Court on this count observing that the mere fact that the revision applications were filed beyond the period of limitation and might result in rejection on the ground of delay did not follow that there were no revision applications pending before the Commissioner (Appeals). The orders of the designated authority rejecting declarations were held to be bad and illegal.

31. The Apex Court, while taking survey of previous judgments, relied upon its own judgment in the case of **Dr.Mrs.Renuka Datla v. C.I.T.**, (2003) 259 ITR 258 (SC); wherein the Apex Court had interpreted section 95(i)(c) of the KVS Scheme;

wherein it was held that if the appeal or revision is pending on the date of filing of the declaration under section 88 of the Scheme, it was not open to the designated authority to hold that the appeal/revision was sham, ineffective or infructuous. The Apex Court has also relied upon its other judgments delivered in the case of **Raja Kulkarni** (supra) and **Tirupati Balaji Developers (P) Ltd. v. State of Bihar**, (2004) 5 SCC 1; wherein it was held that the an appeal does not cease to be an appeal though irregular and incompetent.

32. In the judgment of three judge Bench of the Apex Court in the case of **Computwel Systems P.Ltd.** (supra), the factual scenario depicts that a delayed revision petition filed under section 264 of the Income-tax Act came to be dismissed for want of condonation of delay. The Commissioner, thus, did not entertain the declaration made by the petitioner under the KVS Scheme. The writ petition filed in the High Court came to be dismissed. On a petition for special leave to appeal the Apex Court while affirming the decision of the Commissioner and dismissing the petition for special leave held that the revision petition could be said to be pending only if the delay had been condoned and, since the

delay was not condoned, the revision petition was not pending on the date of the declaration and the declaration could not be entertained.

33. One more judgment of the Apex Court in the case of **Commr. of C.Ex. v. Smithkline Beecham Co. Health C.Ltd.**, 2003 (157) ELT 497 (SC) needs reference; wherein two judge Bench of the Apex Court in its short order held that in the event of dismissal of appeal by the Commissioner (Appeals) for failure to comply with pre-deposit direction, the Tribunal on appeal cannot go into merits of the case and has to confine itself only to issue whether pre-deposit was required or not. Consequently, the observations made by the Tribunal in its order on merits were set aside and the proceedings were remitted back to the Commissioner (Appeals) for consideration on merits. In other words, appeal though restricted in its scope was held to be tenable.

34. In the case of **Raja Mechanical Company Pvt.Ltd. v. Commissioner of Central Excise**, 2002 (144) ELT 36 (Del.), the Delhi High Court was pleased to hold that if the application for condonation of delay is dismissed then appeal may

lie against such order to the Tribunal, but the only question which can be raised in appeal would be: whether the Commissioner (Appeals) was justified in refusing to condone delay. No other question, much less any question on merits of the matter, could be gone into by the second appellate authority. This judgment of the Delhi High Court finds approval by the Apex Court in **Chandi Prasad & others v. Jagdish Prasad & others**, (2004) 8 SCC 724. This view of the Delhi High Court is also in consonance with the view taken by the Apex Court in the case of **Smithkline Beecham Co. Health C.Ltd.** (supra).

35. The aforesaid principles emerging from various judgments of the Apex Court need to be applied to the case at hand, though it give rise to certain additional issues, which need consideration independent of the above judgments.

Consideration :
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36. Having heard rival parties, the learned counsel for the Revenue has placed heavy reliance on the judgment of the Apex Court in the case of **Computwel Systems P.Ltd.** (supra) in support of his submissions and tried to justify the impugned

action. Let us, therefore, examine to what extent this case helps the Revenue. In that case, the revision petition itself was barred by limitation. Since the delay was not condoned, the revision petition was held as not pending on the date of declaration; as such it was held that declaration was not maintainable.

37. In **Shatrushailya Digvijaysingh Jadeja** (supra), appeal was pending for consideration of prayer seeking condonation of delay. In other words, the prayer for condonation of delay was neither granted nor rejected. In that view of the matter, the Apex Court held that the appeal was very much pending though it was delayed.

38. We do not see any conflict of views in three judge Bench decision of the Apex Court in **Computwel Systems P.Ltd.** (supra) and two judge Bench decision in **Shatrushailya Digvijaysingh Jadeja** (supra). As a matter of fact, in the case of **Shatrushailya Digvijaysingh Jadeja**, earlier judgment in the case of **Computwel Systems P.Ltd.** has been, specifically, referred by the Apex Court but no such conflict was noticed by it. 39. In the case at hand, the very appeals, which were pending before

the Tribunal, were well within limitation though they were against the order refusing to condone delay. Such appeals were competent appeals, in view of the judgments of the Apex Court in the case of **Essar Constructions** (supra) and **Smithkline Beecham Co. Health C.Ltd.** (supra), though the scope of the appeal was restricted.

40. The appeals filed before the Tribunal were very much competent and tenable. Ultimately, the appeals have been allowed. The delay in filing appeals before the first appellate authority came to be condoned. As such presentation of appeals filed before the first appellate authority against the orders giving rise to tax arrears became competent. Had there been a refusal to condone delay by the Tribunal, the orders rejecting declarations filed by the petitioner under KVS Scheme would have been justified in view of the decision of the Apex Court in the case of **Computwel Systems P.Ltd.** (supra). The factual scenario of the presence case at hand is altogether different than what was noticed by the Apex Court in the case of **Computwel Systems P.Ltd.** (supra)

41. Considered from another angle, as pointed out hereinabove, the appeals challenging the orders refusing to condone delay, were pending before the Tribunal. Such appeals were perfectly maintainable under the provisions of the Act under which they were preferred. The case at hand stands on little better footing than that of **Shatrushailya Digvijaysingh Jadeja** (supra) decided by the Apex Court; wherein the Apex Court held that revision petition which was filed beyond the period of limitation along with prayer for condonation of delay was perfectly maintainable in the eye of law. In this view of the matter, applying the ratio of the said judgment, in our considered view, on the date on which second declarations were filed by the petitioner, the appeals before the Tribunal were very much pending and the declarations under KVS Scheme were very much in accordance with the Scheme.

42. The four judge Bench in **Sheodan Singh v. Daryao Kumar** (supra), had an occasion to consider a similar question "whether dismissal of an appeal from a decree on the ground that the appeal was barred by limitation was a decision in the appeal". While considering this question, it was held that such appeal was very much competent. Same view has

been followed by three judge Bench of the Apex Court in **Shyam Sundar Sarma's case** (supra)

43. Having taken survey of the judicial pronouncements of the Apex Court right from the judgment in the case of **Mela Ram & Sons** (supra) based on the view taken by the Privy Council in the case of **Nagendra Nath Dey v. Suresh Chandra Dey** (supra) till the judgment in case of **Shatrushailya Digvijaysingh Jadeja** (supra), with respect to the question "whether an appeal accompanied by application for condonation of delay in filing appeal could be said to be an appeal in the eye of law"; the impugned action is liable to be set aside and this petition is liable to be allowed.

44. Considered from third angle based on the settled position of law in **P.Venkateswarlu v. Motor & General Traders**, AIR 1975 SC 1409 and **M/s.Variety Emporium v. R.M.Mohd.Ibrahim**, AIR 1985 SC 207, the subsequent events taking place during the pendency of the litigation can very well be taken into consideration and the Court is competent to mould the relief accordingly. In the case at hand, during pendency of this petition, the Tribunal entertained and allowed appeals filed by the petitioner

challenging the orders refusing to condone delay in filing first appeals. Delay in filing appeals came to be condoned. The matters were remitted back to the first appellate authority for consideration on merits. Thus, the order of the Tribunal condoning delay will now relate back to the original date of presentation of appeals. If that be so, on the date when declarations were filed, all appeals will have to be treated as pending in the eye of law. Consequently, the order rejecting declarations filed by the petitioner will become unsustainable in view of subsequent events.

45. At the end of the day, taking over all view of the matter, the impugned order rejecting declarations filed by the petitioner is liable to be quashed and set aside. The declarations so made are liable to be held as legal and valid. So far as payment of tax liability as per KVS Scheme is concerned, the petitioner will have to make payment thereof, if not made within the time-frame fixed herein.

46. In the result, impugned action is set aside. Petition is allowed. Petitioner is granted 15 days time to make payment of tax liability as per

the KVS Scheme after getting intimation from respondent No.1, who shall communicate the same within 30 days from the date of receipt of copy of this order.

. Rule is made absolute in terms of this order with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**